

# EXHIBIT G



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

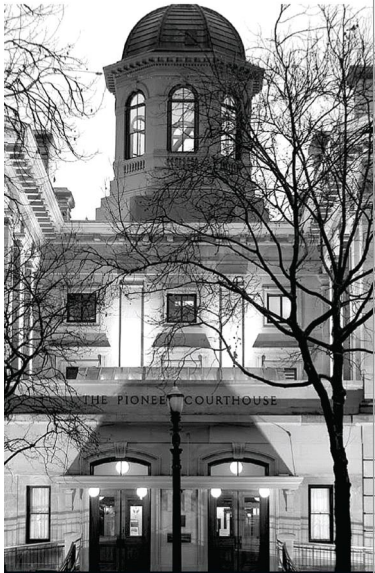
TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



**NAEGELI**  
DEPOSITION & TRIAL



(800) 528-3335

[NAEGELIUSA.COM](http://NAEGELIUSA.COM)

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ELAINE CHATFIELD, as  
Personal Representative  
of the ESTATE OF  
ELSIE LOUISE GRAHAM,

Plaintiff,

vs.

CASE NO. 21CV40522

AVON PRODUCTS, INC., et al.

Defendants.

VERBATIM TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 8

HELD ON  
MONDAY, FEBRUARY 6, 2023  
9:02 A.M.

BEFORE  
THE HONORABLE SHELLEY RUSSELL  
CIRCUIT COURT JUDGE

MULTNOMAH COUNTY COURTHOUSE, 15TH FLOOR  
1200 SOUTHWEST FIRST AVENUE  
PORTLAND, OREGON 97204

<p style="text-align: right;">1542</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 For the Plaintiff:</p> <p>4 Jessica Dean, Esquire</p> <p>5 Jordan Blumenfeld-James, Esquire</p> <p>6 DEAN OMAR BRANHAM SHIRLEY, LLP</p> <p>7 302 North Market Street, Suite 300</p> <p>8 Dallas, TX 75202</p> <p>9 (214) 722-5990</p> <p>10 (503) 907-6636 Fax</p> <p>11 jbj@dobslegal.com</p> <p>12 jdean@dobslegal.com</p> <p>13</p> <p>14 For the Defendant, Whittaker, Clark &amp;</p> <p>15 Daniels, Inc.:</p> <p>16 Allen Eraut, Esquire</p> <p>17 Eric Cook, Esquire</p> <p>18 RIZZO BOSWORTH ERAUT PC</p> <p>19 1300 SW Sixth Avenue, Suite 330</p> <p>20 Portland, OR 97201</p> <p>21 (503) 229-1819</p> <p>22 (503) 229-0630 Fax</p> <p>23 aeraut@rizzopc.com</p> <p>24 kbergstrom@rizzopc.com</p> <p>25</p>	<p style="text-align: right;">1544</p> <p>1 EXHIBITS</p> <p>2 DEFENDANT'S EXHIBITS: RETAINED BY COUNSEL</p> <p>3 No. Description Admitted</p> <p>4 D3 AVON RAW INGREDIENT CODES 1802</p> <p>5 D3 (was marked as 8024) 1802</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">1543</p> <p>1 INDEX OF EXAMINATION</p> <p>2 Page</p> <p>3 PLAINTIFF'S WITNESSES</p> <p>4 STEVEN HABER, M.D.</p> <p>5 Direct Examination by Ms. Dean 1546</p> <p>6 Cross-Examination by Mr. Cook 1754</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">1545</p> <p>1 VERBATIM TRANSCRIPT OF PROCEEDINGS</p> <p>2 TRIAL - DAY 8</p> <p>3 HELD ON</p> <p>4 MONDAY, FEBRUARY 6, 2023</p> <p>5 9:02 A.M.</p> <p>6 BEFORE</p> <p>7 THE HONORABLE SHELLEY RUSSELL</p> <p>8 CIRCUIT COURT JUDGE</p> <p>9</p> <p>10 (Jury enters.)</p> <p>11 THE COURT: Good morning. We are back on</p> <p>12 the record. This is day 11 in the trial in the</p> <p>13 State of Graham versus Whittaker, Clark &amp; Daniel.</p> <p>14 How is everybody doing this morning? Good,</p> <p>15 all rested, and ready go? Back at it. Okay. We're</p> <p>16 going to be continuing with plaintiff's case this</p> <p>17 morning. I do have his little scheduling matter.</p> <p>18 We're going to take a slightly longer lunch today</p> <p>19 because of a commitment that I have over the lunch</p> <p>20 hour that I will have to get to and get back from.</p> <p>21 So we're going to break at 11:30 or shortly</p> <p>22 thereafter this morning. We will still take our</p> <p>23 mid-morning break, but we'll make it about a 10-</p> <p>24 minute break today instead of 15. And with that,</p> <p>25 please, remember to turn off your cellphones and</p>

1754

1756

1 please the Court, members of the jury.  
 2 CROSS-EXAMINATION  
 3 BY MR. COOK:  
 4 Q Doctor, Eric Cook on behalf of Whittaker,  
 5 Clark & Daniels.  
 6 A Mr. Cook.  
 7 Q I've got a little over an hour today to  
 8 try and do this, and then I understand we're going  
 9 to try to pick up tomorrow afternoon if we don't  
 10 finish this afternoon, okay?  
 11 A Thank you.  
 12 Q I want to start first with respect to the  
 13 Moline 2020 article that you referenced on direct  
 14 examination. You're, of course, familiar with that,  
 15 correct?  
 16 A Yes.  
 17 Q And just to give the jury some orientation  
 18 on that, in January 2020 the peer-reviewed Journal  
 19 of Occupational and Environmental Medicine published  
 20 an article titled Mesothelioma Associated with the  
 21 Use of Cosmetic Talc, correct?  
 22 A Yes.  
 23 Q Dr. Jacqueline Moline was the article's  
 24 lead author, true?  
 25 A Yes.

1 Q Okay.  
 2 A -- yes.  
 3 Q Do you understand that she's been retained  
 4 in cases in which Ms. Dean was the plaintiff's  
 5 lawyer?  
 6 A No.  
 7 Q Okay. The article itself claimed to be  
 8 the first large case series to identify cosmetic  
 9 talcum powder contaminated with asbestos as the  
 10 cause of malignant mesothelioma in cosmetic talc  
 11 users, correct?  
 12 A Yes, I believe that's correct.  
 13 Q Did you know that Dr. Moline testified to  
 14 Congress about her findings?  
 15 A No.  
 16 Q Now, with respect to the study itself, it  
 17 makes a very clear claim that there's no exposure or  
 18 no potential exposures to asbestos other than from  
 19 cosmetic talc, correct?  
 20 A I don't think that they identified any  
 21 other substantial exposures. I don't recall the  
 22 exact wording.  
 23 Q Okay. Would you agree -- and I can give  
 24 you a copy of article, if that helps you, sir.  
 25 A Okay.

1755

1757

1 Q The article analyzed medical records and  
 2 deposition transcripts for 33 anonymous individuals  
 3 diagnosed with mesothelioma for whom Dr. Molina had  
 4 conducted a medical legal evaluation as part of tort  
 5 litigation, correct?  
 6 A That's my understanding.  
 7 Q And you understood that she had actually  
 8 been retained by plaintiffs' lawyers in talc  
 9 litigation and that that was the underlying cases  
 10 that she used for her study, correct?  
 11 MS. DEAN: Your Honor, objection. It's  
 12 misleading. There's plaintiffs' lawyers and they're  
 13 pointing to me. I think -- I've never hired her. I  
 14 very much read her papers, but I think that's really  
 15 confusing.  
 16 THE COURT: Sustained.  
 17 MR. COOK: Okay. I'll rephrase it without  
 18 waving my hands, Your Honor.  
 19 Q (BY MR. COOK) You understand that Dr.  
 20 Moline had been retained by plaintiffs' lawyers in  
 21 talc litigation and those cases were the basis of  
 22 her 33 cases in the 2020 publication, correct?  
 23 A I'm -- I may have -- I don't really know  
 24 much about her, but I think I may have heard that  
 25 that was the case --

1 Q If you look right at the objective, that  
 2 might refresh your recollection, sir, the very top  
 3 line.  
 4 A Okay.  
 5 Q All right. Would it be significant to you  
 6 if we were able to find out the names of those  
 7 individuals and track down that they had been  
 8 exposed to asbestos and it was not from cosmetic  
 9 talc?  
 10 A If you want to show me something, I would  
 11 be happy to look at that. That doesn't mean that on  
 12 all of the cases or -- and it doesn't exonerate  
 13 other exposures, but sure, I would be happy to look  
 14 at something if you wanted to show it to me.  
 15 Q Absolutely. So -- and let me just check  
 16 first. Let's lay a little foundation. You would  
 17 agree that it would be significant and contrary to  
 18 the representations in the article if, in fact,  
 19 there were individuals in that study that had sworn  
 20 to exposures to asbestos that did not involve  
 21 cosmetic talc, true?  
 22 A No.  
 23 Q Okay.  
 24 A Because testifying that someone had an  
 25 exposure doesn't mean that you had an exposure. So

1758

1760

1 that doesn't mean that someone did, if they believed  
 2 that they did.  
 3 Q Okay. If someone swore under penalty of  
 4 perjury that they were exposed to asbestos, that  
 5 wouldn't be significant to you?  
 6 A In -- with regard to what? I mean, people  
 7 can not know that they had exposures and/or they  
 8 think that they had exposures and that they weren't.  
 9 It can go both ways. But just because someone  
 10 believes that they did doesn't mean that they did.  
 11 And just because -- and if someone believes that  
 12 they didn't doesn't mean that they didn't.  
 13 Q All right. Let's walk through -- let me  
 14 show you this, sir. This is a federal court order  
 15 in the Bell case. Are you familiar with that?  
 16 MS. DEAN: Your Honor, may we approach?  
 17 (In camera discussion from 3:33 p.m. to  
 18 3:41 p.m.)  
 19 THE COURT: We're going to move on?  
 20 MR. COOK: Yes, Your Honor. Just one  
 21 foundational question.  
 22 Q Have you talked to Ms. Dean about the Bell  
 23 decision?  
 24 A Who?  
 25 Q Have you talked to Ms. Dean about the Bell

1 true?  
 2 A Right. I don't do those.  
 3 Q You talked about exposure today with the  
 4 jury, correct?  
 5 A Right. But I don't do any sort of studies  
 6 to try to do an exposure analysis.  
 7 Q Okay. And dose array construction, that's  
 8 not something that you do?  
 9 A No, not from a -- typically from a  
 10 qualitative. I do, as a pulmonologist, look at  
 11 exposures from how -- the nature of the exposure,  
 12 the intensity, the duration, that sort of thing.  
 13 Q Okay. You've never designed a toxicology  
 14 study that was accepted for peer review, true?  
 15 A Right. I've not done what.  
 16 Q Okay. The jury heard a lot about  
 17 background or ambient exposures to asbestos. Do you  
 18 agree that asbestos is a naturally-occurring  
 19 mineral?  
 20 A Yes.  
 21 Q Mined all over the world?  
 22 A Well, in a number of places. I'm not sure  
 23 it's all over, but yes, it's certainly a number of  
 24 places across the world.  
 25 Q Okay. Dr. Brody talked about how it's in

1759

1761

1 decision that I handed you?  
 2 A No.  
 3 Q Okay. All right. Doctor, can you explain  
 4 to the jury the importance of peer review?  
 5 A Well, peer review is where if someone  
 6 publishes a paper, the paper is submitted to peers  
 7 who review the paper and maybe check it factually or  
 8 whatever, and then ideally it improves the quality  
 9 of studies that are published.  
 10 Q All right. You talked a fair amount today  
 11 about cosmetic talc. Have you subjected your  
 12 opinions on cosmetic talc to peer review?  
 13 A I've never published on peer review on  
 14 cosmetic talc.  
 15 Q Have you designed an epidemiology study  
 16 that's been accepted for peer review?  
 17 A No. I mean, I've -- I did my -- my  
 18 publication on mesothelioma was subject to peer  
 19 review, but it was not -- it was a -- just a case  
 20 series, not a cohort to control study.  
 21 Q How many publications do you have on  
 22 mesothelioma, sir?  
 23 A Just the two.  
 24 Q Two. Okay. You've never designed an  
 25 exposure analysis that was accepted for peer review,

1 the air we breathe. Would you agree it's also in  
 2 the water that we drink?  
 3 A There may be some in certain waters. I  
 4 mean, not in all water, but in certain waters there  
 5 may be some fibers and they may again be like the  
 6 background where it's small, small, short fiber.  
 7 Q And you, of course, are familiar with the  
 8 Agency for Toxic Substances and Disease Registry,  
 9 correct?  
 10 A Yes.  
 11 Q And you're familiar specifically with the  
 12 Toxicological Profile for Asbestos from September  
 13 2001, correct?  
 14 A I am.  
 15 Q And I'll put it on the Elmo to help you,  
 16 but I'll give you the page number as well.  
 17 MR. COOK: If I can have the Elmo, please.  
 18 Q (BY MR. COOK) It's going to be page 151,  
 19 if you want to look at it yourself, sir.  
 20 Are you ready, sir?  
 21 A Yes.  
 22 Q Okay. In 2001, the ATSDR wrote, "Fibers  
 23 in water arise mainly by erosion of natural deposits  
 24 of asbestos or by corrosion of fibers from pipes  
 25 made with asbestos containing cement."

<p style="text-align: right;">1806</p> <p>1 time today, but this is Avon Code 0747. And I want  2 to look at this specific date in a couple entries of  3 September 20th, 1971, to illustrate a point.  4 If we go back here to one of the later  5 entries, what we see is where Whittaker is actually  6 an approved vendor for Avon Code 0768 --  7 A Right. These --  8 Q -- on that same date, September 20th,  9 1971, right?  10 A Right. Because that was from North  11 Carolina. That's the 2450.  12 Q And then what we see on that same date for  13 Avon Code 0810, the approved vendor is Charles  14 Mathieu, correct?  15 A Right. But this was the 4602.  16 Q Right. And so what we see, though, is  17 Avon, when they're looking at the approved vendor,  18 they're differentiating between Charles Mathieu and  19 Whittaker, Clark &amp; Daniels as far as the approved  20 vendor, correct?  21 A Yes.  22 MR. COOK: All right. Your Honor, this  23 might be a good point to stop for the day before I  24 go into another topic, if we could.  25 THE COURT: All right. Members of the</p>	<p style="text-align: right;">1808</p> <p>1 THE COURT: 8024?  2 MR. ERAUT: Yes, Your Honor.  3 THE REPORTER: I'm sorry, Mr. Eaut. What  4 was the first, the initial number?  5 MR. ERAUT: Remark exhibit referenced as  6 D3 as 8024.  7 (Defendant's Exhibit No. D3 was remarked  8 as 8024 marked for identification.)  9 THE COURT: So D3 is 8024.  10 MR. COOK: I just want to put on the  11 record a short paraphrase of what occurred during  12 the sidebar. Prior to that on the record there was  13 an objection with respect to use of the Bell  14 decision. The cite for that is 2022 U.S. District,  15 LEXIS 199 180. It's from the United States District  16 Court for the Middle District of North Carolina,  17 decided September 13th, 2022.  18 I think the article -- or, excuse me --  19 the opinion itself lays out many of the reasons  20 here. The Moline 2020 case series was raised on  21 direct examination with the jury and represented as  22 a publication in which there were no exposures to  23 asbestos other than from cosmetic talc.  24 The Bell decision specifically found one  25 of the individuals that was in the Moline case</p>
<p style="text-align: right;">1807</p> <p>1 jury, we'll adjourn for the day and we'll return  2 tomorrow morning. Please be here -- are you all  3 able to be here by 845? We'll start a little bit  4 earlier to make up for a little bit of the time we  5 lost today. We're going to start at 8:45 tomorrow.  6 Thank you. I appreciate that. We're going to  7 adjourn for the day. Please do not discuss the case  8 with anyone or do any research. Keep your notepads  9 on the chairs. Thank you, everybody.  10 (Jury exits.)  11 THE COURT: So what we will try to do  12 tomorrow morning is start a little bit early, 15  13 minutes early, and we can take an hour lunch  14 tomorrow, if that will help make up for some of the  15 time that was lost today. And I'll let you all out.  16 But you did want to put at least one issue on the  17 record?  18 MR. COOK: If I may, Your Honor.  19 MS. DEAN: Is it okay if Dr. Haber leaves?  20 THE COURT: Yes.  21 THE WITNESS: Thank you, Your Honor.  22 (Witness excused.)  23 MR. ERAUT: Your Honor, before we get to  24 that, I would like to remark the Exhibit reference  25 of D3 as 8024, just to keep with consistency.</p>	<p style="text-align: right;">1809</p> <p>1 series had actually, while represented by counsel --  2 and I'll read it specifically. This is from page 16  3 of the decision -- "Mrs. Bell nonetheless made  4 statements to the Industrial Commission while  5 represented by counsel that she has sustained an  6 occupational disease caused by exposure to asbestos  7 during employment with Hoechst Celanese Corporation  8 and Pillowtex Corporation. The alleged occupational  9 disease was mesothelioma."  10 The Court went on to note several other  11 issues which are set forth in the opinion itself and  12 we raised with the Court. I won't lay those out  13 now, as it's already in the written decision. But  14 the Court overruled -- excuse me -- the Court  15 sustained the objection and did not permit  16 additional questioning with respect to the Bell  17 decision, which we note our exception to. Thank  18 you.  19 THE COURT: And, Ms. Dean, did you want to  20 add anything to that?  21 MS. DEAN: Within a minute or less, first,  22 there was just a threshold issue about hearsay. This  23 is a hearsay document quoting additional layers of  24 hearsay. And when asked if there was an exception,  25 none was offered. And under Rule 703 or 706 hearsay</p>



1810

1812

1 documents can be relied on, but this witness  
2 exclusively indicated he had not.  
3 And so I think on the hearsay level this  
4 was a black and white issue. But there's also  
5 layers of concern under 403, the relevance is  
6 attenuated. The fact that someone believed or a  
7 lawyer even believed that a client was exposed  
8 doesn't mean an occupational medicine doctor with  
9 training was somehow inaccurate in her statement  
10 that she was not.

11 And then there's all of this extra layers  
12 of bringing in what the Industrial Board and the  
13 North Carolina law permits, why the claim was  
14 denied, which is undue confusion of time and  
15 prejudice. One of the things explicitly noted by  
16 counsel that he wanted to state is that her lawyer  
17 allowed her to file this. What a lawyer in North  
18 Carolina did in a different matter is truly  
19 problematic.

20 The last thing I'll note is Dr. Haber  
21 indicated that by now there are literally hundreds  
22 or well over 275 case series reports. The idea that  
23 whatever relevance this has is significant given the  
24 number of other cases I think is undermined by the  
25 number of other cases.

1 MR. COOK: Weird echo?  
2 THE COURT: -- resonant, weird echo. Is  
3 there a microphone on the Elmo?  
4 MR. COOK: Is there?  
5 THE COURT: Is there a way to turn it off?  
6 MR. COOK: Apparent there is.  
7 THE COURT: Okay. Yeah, if we can figure  
8 that out. All right. Anything else we need to put  
9 on the record?

10 MS. DEAN: Whittaker, Clark & Daniels  
11 filed an answer and we filed a motion to strike --  
12 THE COURT: I saw that.

13 MS. DEAN: -- on their affirmative  
14 defenses. I don't think that needs to be heard at  
15 this time, but I want to make the Court aware that  
16 that's out there.

17 THE COURT: I think all of those issues  
18 probably get ironed out depending on what jury  
19 instructions we give, so -- and the jury will not be  
20 seeing the Complaint and the Answer. That's my  
21 understanding.

22 MS. DEAN: Then we got in to WCD what we  
23 think is an accurate depiction of where we are with  
24 jury instructions. We're just waiting to hear back  
25 and have that for you.

1811

1813

1 MR. COOK: And if I could just very  
2 briefly in response to that note, you know, Ms. Dean  
3 has raised a number of those. Thirty-three of those  
4 come from the Moline 2020 case series. There are  
5 additional ones that Dr. Moline has raised. And  
6 then Dr. Emory, there are similar concerns with  
7 respect to Dr. Emory's publication that there are  
8 with Dr. Moline's, that there are individuals  
9 included in those studies that had exposures to  
10 asbestos which are not identified in the study, and  
11 the authors are claiming that it's only exposure to  
12 cosmetic talc.

13 We think the examination with respect to  
14 Bell, what we have is one individual that we've been  
15 able to find out their name and what their -- what  
16 their testimony was under, and we found 100 percent  
17 of those individuals had sworn to an alternative  
18 exposure to asbestos. And we think that's something  
19 that's relevant, highly relevant, and should be  
20 considered by the jury. Thank you.

21 THE COURT: And the objection is still  
22 sustained. Mr. Cook, any time you walk over by your  
23 Elmo --

24 MR. COOK: Yes.

25 THE COURT: -- we get this really --

1 THE COURT: Great. All right. So with  
2 that, have a good night and see you early tomorrow.  
3 (Proceedings adjourned at 4:49 p.m.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1814

1 CERTIFICATE

2  
3 I, Margaret R. Golden, do hereby certify that I  
4 reported all proceedings adduced in the foregoing matter  
5 and that the foregoing transcript pages constitutes a full,  
6 true, and accurate record of said proceedings to the best  
7 of my ability.

8  
9 I further certify that I am neither related to  
10 counsel or any part to the proceedings nor have any  
11 interest in the outcome of the proceedings.

12  
13 IN WITNESS HEREOF, I have hereunto set my hand this  
14 20th day of February, 2023.

15  
16  
17  
18  
19  
20 /S/ Margaret R. Golden  
21 Georgia License No. 5409-06355-5897-1392